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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,849

04/28/2006

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EXAMINER

GREGORIO, GUINEVER S

ART UNIT

PAPER NUMBER

1793

NOTIFICATION DATE

DELIVERY MODE

03/09/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Advisory Action Before the Filing of an Appeal Brief	Application No. 10/577,849	Applicant(s) SOTOWA ET AL.	
	Examiner GUINEVER S. GREGORIO	Art Unit 1793	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 February 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1, 2, 4-9, 12-22 and 28-33.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Melvin Curtis Mayes/
 Supervisory Patent Examiner, Art Unit 1793

/GUINEVER S GREGORIO/
 Examiner, Art Unit 1793

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues that Kitagawa et al. (U.S. Pat. No. 2002/0061445 A1) does not disclose or suggest the specified properties claimed which Examiner acknowledges but Examiner takes the position that the method recited by Kitagawa et al. does not appear to be patentably distinct from Applicant's method.

Kitagawa et al. teaches a carbonaceous powder prepared using a lumpy graphite powder as a nucleus then covering the graphite powder with a carbon precursor. Examiner believes the method recited by Kitagawa can be broadly interpreted to correspond with allowing the organic compound serving as a polymer source material to deposit onto the carbonaceous particles. Claim 1 specifically states "the organic compound serving as a polymer source material to deposit onto and/or permeate into the carbonaceous particles". Applicant has written the claims so that the carbon precursor permeating into the carbonaceous material is not necessary. Furthermore Kitagawa et al. teaches heating to a temperature range of 700 to 2800 °C which overlaps with Applicant's recited temperature range of 1800 to 3300 °C. Examiner appreciates Applicant attempt to distinguish Kitagawa from the claimed invention but Examiner would appreciate data showing a difference between Kitagawa's invention and Applicant's invention when the carbon material is produced in the overlapping temperature range. In other words, Examiner would appreciate data to show the difference between carbon materials produced at 1800 to 2800 °C by Kitagawa's method and Applicant method.

Applicant then argues that the rejection based on Wilde et al. (U.S. Pub. No. 2003/0194557 A1) should be withdrawn because the carbon material obtained by Applicant is a powder while the material obtained by Wilde et al. is paper. Unfortunately, Applicant does not specifically claim a carbon powder comprising carbonaceous particles and a carbon material derived from an organic compound etc. Applicant has claimed "A carbon material for a battery electrode, which comprises a carbon powder material as a composite of carbonaceous particles and a carbon material..." One of ordinary skill in the art could interpret the quoted statement to mean a composite comprising carbon powder, carbonaceous particles and a carbon material derived from an organic compound..." Wilde et al. teaches a composite comprising carbon fiber, graphitic particles and binder then heating up to a temperature of 2500 °C (paragraph 43-56). Examiner believes the proffered interpretation is reasonable and hence is not convinced that the claimed inventions is patentably distinct from Wilde et al.